SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1036

In the Matter of the Application of
EDWARD LECCI, individually and as President of the Nassau County Patrolmen's Benevolent Association,
Petitioners,

— against —

ADELE LEONARD, executive directrix of the Civil Service Commission, and the Civil Service Commission and FRANCIS B. LOONEY, Commissioner of Police and the Nassau County Police Department,
Respondents

Petition for a Writ of Certiorari to the Court of Appeals for the State of New York

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Petitioners pray that a writ of certiorari issue to review the judgment of the Court of Appeals for the State of New York entered on November 17, 1971.

Citations to Opinion Below

The opinion of Special Term Supreme Court, Nassau County, State of New York dismissing Petitioner's complaint is printed in Appendix C. The Appellate Division of the Supreme Court unanimously affirmed the findings of Special Term without opinion, the text of which as reported at 325, N.Y.S. 2d 622 (1971) is printed in Appendix B.

The opinion of the Court of Appeals of the State of New York denying Petitioner's motion for leave to appeal is printed in Appendix A and as yet has not been reported in the official reports.

Jurisdiction

The judgment of the Court of Appeals was entered on November 17, 1971. The Court of Appeals by its action denied Petitioner's motion for leave to appeal thereby exhausting Petitioner's state remedies.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (3).

The Question Presented

Whether the regulation imposing two years of college as a requirement for promotion may be applied retroactively.

Constitutional Provisions, Statutes, Rules, etc., Involved

The constitutional provision involved is the due process clause of the fifth amendment to the United States Constitution as it applies to property and as made applicable to the states through the fourteenth amendment; resolutions 41 and 435 of the Nassau County Civil Service Commission; and Nassau County Police Department Order 371. The above named amendment, resolutions and order are printed in Appendix D.

Statement

Francis B. Looney at all times hereinafter mentioned was the duly appointed Commissioner of Police for the Police Department, County of Nassau and as such was responsible for making and promulgating rules with regard to educational requirements for promotion. That pursuant to his authority, Francis B. Looney promulgated teletype order 371 dated December 30, 1969 and which is set forth in Appendix D. Said order 371 is binding and mandatory upon the members of the Nassau County Police Department. Order 371 sets forth requirements for promotion applicable to every Nassau County Police Officer, to wit, that effective January 1, 1973, a minimum educational requirement of two years of college will be required for admission to the examination for Captain in the Nassau County Police Department; and effective January 1, 1974, a minimum educational requirement of two years of college will be required for the admission to the examination for Police Lieutenant and Police Sergeant in the Nassau County Police Department.

That at all times hereinafter mentioned Adele Leonard was the duly appointed executive director of the Civil Service Commission, County of Nassau, and as such was responsible for making the rulings with regard to educational requirements for promotion within Civil Service. That pursuant to her statutory authority, Adele Leonard promulgated Resolutions 41 and 435 which are set forth in Appendix D and which are identical to the directives set forth in Francis B. Looney's teletype order 371, referred to above.

Petitioner commenced an Article 78 proceeding pursuant to the Civil Practice Law and Rules of the State of New York, to annul said resolutions promulgated by the Nassau County Civil Service Commission (Resolutions 41 and 435) and the order of the Nassau County

Police Department (Order No. 371) which set a minimum educational requirement of two years of college as a prerequisite for taking the above-mentioned promotional examinations. In particular, the preceeding attacked the applicability of said Order and Regulations to members of the Police Department who were employed prior to the adoption of said Order and Regulations.

Special Term, Supreme Court, Nassau County, State of New York, dismissed Petitioner's complaint (Appendix C), the Appellate Division of said Supreme Court, unanimously affirmed the findings of Special Term (Appendix B), and the Court of Appeals denied Petitioner's motion for leave to appeal thereto (Appendix A), thereby exhausting Petitioner's state remedies.

Basis for Granting the Writ

This Petition raises substantial and important questions concerning the rights of an individual recognized and protected by the Fifth Amendment to the United States Constitution, to wit, the right not to be deprived of property without due process of law. In effect, Respondents are attempting to deprive Petitioner of proprietary rights, to wit their right to advance within the Police Department of the County of Nassau, by requiring that all members of the Nassau County Police Department prior to being admitted to take a Civil Service examination for elevation to the rank of Captain, Lieutenant or Sergeant, must meet a two year college educational requirement. By having the requirement applicable to members of the Nassau County Police Department who were on the force prior to its adoption, there results a deprivation of said members' proprietary rights and interests as well as creating an undue hardship upon said members which is unjust and oppressive in nature. As a practical matter, a member who

began serving in the Nassau County Police Department prior to the enactment of resolutions 41 and 435 of the Nassau County Civil Service Commission and Nassau County Police Department order 371, is barred from advancement. It should not be overlooked by the court that a duty schedule for a police officer covers a seven day week and a twenty-four hour day making the attendance at college, in many instances, a practical impossibility. In addition, family responsibilities in many cases dictate the inability of a member of the Nassau County Police Department to obtain the necessary college credits to seek advancement.

By Respondents acts, the terms and conditions of employment as to those police officers who had joined the Nassau County Police Department, prior to the adoption of Resolutions 41 and 435 of the Nassau County Civil Service Commission and Order 371 of the Nassau County Police Department have been arbitrarily altered. Retroactive enactments that create undue influence or hardship and which create a liability in relation to a transaction as to which no liability previously had attached, as is the case here, are so arbitrary, harsh and oppressive as to be regarded as invalid (*Application of Baily, et al.* 37 N.Y.S.2d 275 (1942); *Hayman v. Morris*, 37 N.Y.S.2d 881 (1942).

CONCLUSION

For the reasons stated above, Petitioners respectfully submit that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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Order Denying Motion for Leave to Appeal

STATE OF NEW YORK,
IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Seventeenth day of November A.D. 1971.

Present, HON. STANLEY H. FULD, *Chief Judge, presiding*

(Same Title)

A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein and papers having been duly submitted thereon and due deliberation thereupon had:

ORDERED, that the said motion be and the same hereby is denied.

(Seal) a copy

GEORGE KIMBALL
Deputy Clerk

Opinion of Appellate Devision
Second Department

In the Matter of Edward LECCI, etc., Appellant, v. Adele LEONARD, etc., et al., Respondents.

Supreme Court, Appellate Division, Second Department. Sept 27, 1971. Richard Hartman, Mineola, for petitioner-appellant. Joseph Jaspan, County Atty. of Nassau County, Mineola, for respondents-respondents; Benedict F. Romano, Deputy County Atty., of counsel. Judgment of the Supreme Court, Nassau County, dated February 26, 1971, affirmed, without costs. No opinion.

HOPKINS, Acting P.J., and GULOTTA, CHRIST, BRENNAN and BENJAMIN, JJ., concur.

Memorandum Decision of Justice Velsor

SUPREME COURT

NASSAU COUNTY, SPECIAL TERM I

Index No. 4267/70. Motion Cal. No. 50 (8/26/70).

By Velsor J.

Dated: September 15, 1970.

(Same Title)

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In this proceeding pursuant to Article 78 of the CPLR judgment is GRANTED in favor of the respondents dismissing the petition.

The petitioner is a member of the Police Department of the County of Nassau. He alleges that the Civil Service

Commission of Nassau County was arbitrary and committed an illegal act in adopting two resolutions in December 1969 whereby candidates for promotion to Captain, effective January 1, 1973, and to Lieutenant and Sergeant, effective January 1, 1974 would be required to show successful completion of two years of college. It is alleged further that the "order goes contrary to Rule 28 of the Civil Service Law of the State of New York" (paragraph "8" of petition) and that "to impose this requirement [two years of college] on current members of the department who enlisted with the understanding that no college educational requirements were necessary for promotion would be arbitrary...".

The Rules and Regulations of the Department of Civil Service of the State of New York do not contain a "Rule 28" as alleged in paragraph "8" of the petition pertaining to promotions as set forth in McKinney's Consolidated Laws Vol. 9 at page 461. Rule 28 is concerned with the "effect of temporary appointment on eligibility for permanent appointment".

That rule is renumbered as §4.9 in the 1969-70 supplement (p. 160) to the same Vol. 9 (See also 4 NY C R R 4.9). Accordingly it must be held that the resolutions changing the qualifications for promotion do not violate "Rule 28".

A similar contention as that raised by the petitioner herein was raised and rejected in Mtr. of Moss v. Dept. Civ. Serv., 55 Misc. 2d 653 with Justice Harry B. Frank writing at page 656 "The claim and contention of petitioner that he had the right to participate in the promotion examination on the basis of the minimum educational prerequisites in effect when he entered into permanent employ in 1960 cannot be sustained (see Colasurdo v. Stanley, 28 A. D. 2d 959)". The Record on Appeal in Colasurdo v. Stanley, supra, reveals that Mr. Justice Frank S. McCullough on June 15, 1966 in an opinion dismissing the original

complaint wrote in part "No authority has been submitted to the Court, nor does the Court know of any authority for the proposition that once a person is declared eligible to take an examination for a Civil Service position, he must always thereafter be deemed eligible to take subsequent examinations for the same position". (Brief of Respondents, Appendix A, page 17).

In Mtr. of Crowley v. Milone, 55 Misc. 2d 660, aff'd. 31 A. D. 2d 928, the petitioners urged that the eligibility requirements for a promotion examination could not be reduced so that probation officers with less experience and training would be eligible; but Mr. Justice Daniel G. Albert at Special Term held adversely to the petitioners and was affirmed on appeal by the Appellate Division Second Department.

The respondents papers show: that the resolutions of the Civil Service Commission were made after a recommendation was made by the Commissioner of the Nassau County Police Department concerning the need in police work for supervisory personnel to have advanced education; and that the Police Department has made available to its personnel a tuition free two year college program at Nassau County Community College. In view of those facts and the fact that ample notice has been given to incumbent policemen who will not be otherwise eligible to take promotion examinations before 1973 (Captain) or 1974 (Lieutenant and Sergeant) to acquire the advance education, it may not be held that the change in the eligibility requirements, effective January 1973 and January 1974 was unreasonably or arbitrarily made. As stated by the Court of Appeals in Matter of Wirzberger v. Watson, 305 N.Y. 507, 513, "The decisional law on the problem, is that the Commissioner's fixing of the minimum requirements for admission to an examination is not to be interfered with by the Courts if any fair argument can be made to sustain

its action . . . even though they may differ from the commission as to its advisability." The petitioner has offered no argument whatsoever to contradict the recommendation of the Commissioner of the Nassau County Police Department that supervisory personnel be better educated to cope with the many problems facing law enforcement officers today.

Submit judgment on notice.

J. S. C.

Nassau County Civil Service Commission Resolution No. 41

"RESOLVED that the qualification requirements to participate in promotion examinations for the rank of Sergeant and Lieutenant in the Nassau County Police Department, held after January 1, 1974, be amended to require the successful completion of two years of college."

Nassau County Civil Service Commission Resolution No. 435

"RESOLVED that in accordance with the decision of the Nassau County Civil Service Commission on December 19, 1969 the qualification requirements to participate in promotion examination for Captain held after January 1, 1973 be amended to require the successful completion of two years of college."

Amendment V of the United States Constitution

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property by taken for public use without just compensation.

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Respondents

Brief in Opposition to Petition for a Writ of Certiorari to the Court of Appeals for the State of New York.

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Argument in Opposition to Granting a Writ of Certiorari.

POINT I

The regulations enacted by the respondents are constitutional in their entirety.

In its efforts to provide better police services to the community which it serves, the Nassau County Police Department has made available to all its members a tuition-free two-year college program leading to an associate degree in police science. The enactment of Nassau County Civil Service Resolutions 41 and 435, and Nassau County Police Department Order No. 371, establishing a prere-

quisite of two years of college for promotional examinations, was essential for the improved operation of a modern police department.

It is desirable that all law-enforcers attain at least two years of college education so that they can better cope with the increase in crime and social disorder. An officer is called upon to deal with a variety of social problems, in addition to the criminal element. In an affluent community such as Nassau County, a better educated patrolman will find it easier to command and merit the respect of the citizenry.

Thus, the enactment of the above-mentioned resolutions and order (which pertain only to candidates for promotion to the rank of Captain, Lieutenant and Sergeant) was necessitated by the awesome job of preventing and solving crimes perpetrated by a more technologically advanced criminal; quieting disturbances stemming from complex social problems and often instigated by the well-educated disenchanted; and administering and supervising an agency which has at its command thousands of men, in addition to equipment which was a figment of science fiction several decades ago.

In view of these facts the petitioner did not contest the authority and appropriateness of the Civil Service Commission's resolutions and the Commissioner's order which set a two-year college education as a prerequisite for promotions for new members just joining the police force (R. 8). Indeed, on page 5 of his brief to the Lower Court, he stated:

> "Petitioner fully agrees said educational requirements should apply to members of the Police Department who joined the Department after said requirements were enacted."

However, petitioner argues that current members of the force enlisted with the understanding that there were no college educational requirements for promotion (R. 8). Petitioner contends that to impose this requirement on current members of the department would cause an "undue hardship" on these family men (R. 8).

Thus, petitioner's description of the two-year college educational requirement as arbitrary, capricious, illegal and unconstitutional stems not from the inadvisability of such a prerequisite; not from the lack of authority of respondents to determine that such a prerequisite is essential for the operation of the department and the control of crime; and not from any discriminatory practice.

In addition petitioner cannot complain of any financial burden being imposed since the Police Department has had a tuition-free program in effect for more than three years. This coupled with the flexible schedule offered at Nassau Community College, it is reasonable to assume that this degree was at least as easily accessible to all policemen as to any individual who is holding down a job to support a family and attending college for a degree.

Finally, the petitioner cannot claim surprise since three years—in the case of candidates for the positions of Sergeant and Lieutenant, and two years—in the case of candidates for Captain, will elapse before said regulations will go into effect. In the interim, all candidates will be admitted to promotional examinations with or without the college requirements.

Petitioner's only support for his contention is that it will cause an undue hardship on members who enlisted with the understanding that no college educational requirements were necessary.

Petitioner cites two cases in support of this contention.

The first cited is *Application of Bailey, et al.*, 178 Misc. 1045, 37 N.Y.S. 2d 275 (Sup. Ct. N.Y.Co. 1942), *rev'd on*

other grounds, 265 App. Div. 758, 40 N.Y.S. 2d 746 (1st Dept. 1943), *aff'd*, 291 N.Y. 534, wherein the interpretation and legality of section 61-a of the General Corporation Law was in issue. In that case, the directors of Bush Terminal Company, after successfully defending an action brought against them by a trustee of that corporation to hold them personally liable for having paid dividends out of capital, in violation of the Stock Corporation Law, brought a proceeding to recover expenses incurred in their successful defense. One of the arguments before that court was whether the statute was applicable in that it took effect after the entry of the judgment of the lower court but during the pendency of the appeals therefrom. The court therein, clearly faced with a question of retroactivity, first stated that except for ex post facto laws (referring only to penal laws) and laws impairing the obligations of contracts, neither of which were involved, neither the Federal nor State Constitutions contained any prohibition against retroactive laws as such. The court recognized, however, that retroactive laws may be invalid under the due process clauses, stating:

> "Laws which attempt retroactively to create a liability in relation to a transaction as to which no liability previously had attached generally are so arbitrary, harsh, and oppressive that it is perhaps accurate to say of them that they are presumptively invalid (See *Graham & Foster* v. *Goodell*, 282 U.S. 409, 426), but too numerous and varied are the instances in which such laws have been sustained to permit the broad generalization that such laws necessarily are unconditional...
>
> "...The true approach, the one I take to be the one now adopted in authoritative cases, seems to me to be to refuse to judge retroactivity in the abstract or *per se* and appraise the operation and effect of

> the statute with a view to all its elements, including but not viewing alone its retroactivity, and determine from the entire setting whether its operation and effect in that particular setting are so harsh, arbitrary, and oppressive as to constitute a denial of due process of law (or of the equal protection of the laws); and that seems to me but another way of repeating that the test of constitutionality is not an absence of retroactivity but an absence of a denial of due process or of equal protection." 178 Misc. at 1049-1050, 37 N.Y.S. 2d at 280-281.

The second case cited by petitioner is *Hayman* v. *Morris, n.o.r.*, 37 N.Y.S. 2d 884 (Sup. Ct. N.Y. Co. 1942). This case also dealt with the allowance of expenses pursuant to section 61-a of the General Corporation Law. In addressing itself to the question of retroactive legislation, the court said:

> "If the effect of the retroactive legislation is to create undue harship, or is unjust, or oppressive, it is invalid; otherwise it is not. A retroactive law is not necessarily void; 'A retrospective law may be just and reasonable' (Inhabitants of Town of Goshen v. Inhabitants of Town of Stonington, 4 Conn. 209, 225, 10 Am. Dec. 121; see, also, United States v. Schooner Peggy, 1 Cranch 103, 109, 2 L.Ed. 49); 'they are often beneficial, and sometimes necessary' (Blount v. Windley, infra, 95 U.S. at page 180, 24 L.Ed. 424); considerations of public good and public justice have been treated and held as adequate reasons for upholding retroactive legislation. Blount v. Windley, 95 U.S. 173, 180, 24 L.Ed. 424; Brearley School, Ltd., v. Ward, 201 N.Y. 358, 363, 94 N.E. 1001, 40 L.R.A.,N.S., 1215, Ann. Cas. 1912B, 251; Goshen and Peggy cases, supra."

The key relationship of the cases petitioner cites with the case before this Court is that of retroactivity. The law involved in the *Bailey* and *Hyman* cases *supra* included a clause which provided:

> "This act shall take effect immediately and shall apply to all such actions, suits or proceedings as may be pending and in which no final judgment has been made and entered at the time this act takes effect." L.1941, ch. 350.

It was this clause which eventually led to an adverse decision for the directors in the *Bailey* case by the Court of Appeals. Though the retroactive effect of the law was upheld in both cases, the issue of what constituted a "final judgment" led the Court of Appeals to deny reimbursement in the *Bailey* case since a lower court had already rendered a decision prior to the law's enactment. However, notwithstanding the ratification of legality of a retroactive clause in section 61-a of the General Corporation Law, both cases did formulate conditions of valid retroactivity.

The applicability of these formulations is dependent on whether the resolutions involved herein, namely Resolutions 41 and 435, are retroactive. A statute is not "retroactive" merely because it draws upon antecedent facts for its operation. At the very least the statute must interfere with the antecedent *rights* of the parties.

Since "retrospective" is sometimes treated as being legally synonymous with "retroactive" (*Conde* v. *City of Schenectady*, 164 N.Y. 258, 58 N.E. 130, 132 [1900]; 77 C.J.S. *Retroactive*, p. 331), and since there does not appear to be a legal distinction between the two terms (*City of New York* v. *Foster*, 148 App. Div. 258, 261, 133 N.Y. Supp. 152, 155 [3d Dept. 1911]; *Annacchino* v. *Annacchino*, 61 Misc. 2d 636, 306 N.Y.S. 2d 603 [Sup. Ct. Onondaga

Co. 1969], the Court is respectfully directed to refer to another case, *Society for the Propagation of the Gospel v. Wheeler*, 2 Gall 105, 22 Fed. Cas. 756, 757, Fed. Cas. No. 13,156 (Cir. Ct. D. New Hampshire 1814), wherein Justice Story, in answering the question as to what is a retrospective law, stated:

> "Upon principle, every statute, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective."

The petitioner's claim that these regulations are being applied retroactively to those persons who were members of the police force at the time the regulations were enacted, and thus violate the Constitution.

Even assuming that these resolutions are retroactive, they would still qualify as a reasonable imposition of a new obligation. As was stated in *Application of Bailey, supra*, the legality of retroactivity should not be judged in the abstract. Mere retroactivity is not sufficient. It must be determined from the entire setting whether the operation and effect of the retroactive obligation is so harsh, arbitrary and oppressive as to constitute a denial of due process of law.

Retrospective laws in and of themselves may be desirable. As was stated in *Calder v. Bull*, 3 Dall. (3 U.S.) 386, 391, 1 L. Ed. 648, 650 (1798):

> "...but there are cases in which [retrospective] laws may justly, and for the benefit of the community, and also of individuals, relate to a time antecedent to their commencement...But such laws may be proper or necessary, as the case may be."

The petitioners, the respondents, and the Court below recognize the necessity for supervisory personnel of a police force to have a minimum of two years college education in order to be better prepared to prevent and solve crime perpetrated by the more technologically advanced criminals of today. The petitioners claim a proprietary right to advance in the Police Department (p. 4 petition for certiorari). The Respondents do not propose to deny any member of the force any such advancement, but merely to condition the promotions on the successful completion of a two year college course in police science, a condition which all parties agree is proper and essential. One is hard pressed to find any right to job advancement in the Constitution, and this becomes even more difficult when the individuals seeking the advancement lack the education which is deemed essential to the proper fulfillment of the obligations which that advanced position entails. Yet this is precisely the position of the petitioners.

POINT II

Respondents' requirements for admission to policemen's promotional examinations are fair and do not warrant review by this Court.

It is axiomatic that the determination of a Civil Service Commission setting minimum requirements for admission to any examination will not be interfered with by the courts, if any fair argument can be made to sustain these requirements.

In *Matter of Weinberger* v. *Watson*, 306 N.Y. 307, 313, 114 N.E. 2d 15 (1953), the court upheld a change in the eligibility requirement for a promotional examination and, in so doing, determined that prior eligibility under different standards to take the examination did not bind the Commission. In its decision, the court stated:

> "The decisional law on the problem is that the commission's fixing of the minimum requirements for admission to an examination is not to be interfered with by the courts if any fair argument can be made to sustain its action, * * * even though they may differ from the commission as to its advisability." *People ex rel. Moriarty v. Creedman*, 296 N.Y. 570, 575-576; *People ex rel. Schau v. McWilliams*, 185 N.Y. 92, 99; *Matter of Lavertu v. Finegan*, 249 App. Div. 411, affd. 275 N.Y. 553; *Matter of Davis v. Wiegers*, 260 App. Div. 127, affd. 285 N.Y. 537; and see *Matter of Murray v. McNamara*, 303 N.Y. 140, 144.)" 20 N.Y. at 513.

In the instant case, in the decision of the lower court (Veber, J.), it was stated:

> "The petitioner has offered no argument whatsoever to contradict the recommendation of the Commissioner of the Nassau County Police Department that supervisory personnel be better educated to cope with the many problems facing law enforcement officers today." (R.21)

In *Colasurdo v. Staulon*, 28 A.D.2d 959, 282 N.Y.S. 2d 974 (2d Dept. 1967), the Appellate Division affirmed, without opinion, a judgment of the Supreme Court, Rockland County, dated December 22, 1966. In this case, Mr. Justice Frank S. McCullough, in an opinion dated June 15, 1966, dismissed the original complaint, stating:

> "No authority has been submitted to the Court, nor does the Court know of any authority for the proposition that once a person is declared eligible to take an examination for a Civil Service position, he must always thereafter be deemed eligible to take subsequent examinations for the same position." (Resp. Lower Court Brief, p. 17)

This same principle was adhered to in *Matter of Moss v. Dept. of Civil Service*, 55 Misc.2d 653, 286 N.Y.S.2d 386 (Sup. Ct. N.Y. Co. 1967), wherein the application of the petitioner (a senior youth parole worker) to take the Youth Parole Supervisor promotional examination was denied for failure to possess the necessary educational prerequisite (a master's degree). Petitioner argued that he had the right to participate in the promotional examination on the basis of the prerequisites in effect when he entered the permanent employ of the respondent, Department of Social Welfare. In denying the petitioner's application, the court stated:

> "The claim and contention of petitioner that he had the right to participate in the promotion examination on the basis of the minimum educational prerequisites in effect when he entered into permanent employ in 1960 cannot be sustained. ..." 55 Misc. 2d at 656, 286 N.Y.S.2d at 389.

In *Matter of Crowley v. Milone*, 55 Misc.2d 660, 286 N.Y.S.2d 143 (Sup. Ct. Nassau Co. 1967), *aff'd*, 31 A.D.2d 928, 299 N.Y.S.2d 804 (2d Dept. 1969), the petitioners, probation officers with permanent status, argued the eligibility requirements for a promotional examination could not be reduced, permitting persons with less experience and training to take the examination. The lower court upheld the change in eligibility requirements, stating that "... the petitioners have not shown that there is no reasonable basis for the change." 55 Misc.2d at 662, 286 N.Y.S.2d at 146. This decision was upheld by the Appellate Division, Second Department, with all judges concurring.

The above cases are adequate precedent for the enactment and application of Resolutions 41 and 435. The Civil Service Commission possesses broad powers and discretion in determining eligibility to participate in promotional examinations. See also, *Matter of Giorgio v. Lang*, 37 Misc.

2d 1006, 235 N.Y.S.2d 137 (Sup. Ct. N.Y. Co. 1962), *aff'd no opinion*, 18 A.D.2d 968, 238 N.Y.S.2d 506 (1st Dept. 1963). Where this discretion is exercised and additional prerequisite education requirements are adopted, it becomes the obligation of the petitioner to show that there was no reasonable basis for the change. The appellant herein has admitted that the new requirement was advisable.

The respondents respectfully submit that the additional requisites adopted by the resolutions in question were clearly not illegal, discriminatory, arbitrary or capricious nor violative of any Constitutional provision.

CONCLUSION

For the reasons stated above, respondents respectfully submit that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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